

CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY

STRUEVER FIDELCO CAPPELLI LLC,

CITY OF YONKERS

AND

COUNTY OF WESTCHESTER

**FULL TAX AGREEMENT
WITH
AFFECTED TAX JURISDICTIONS CONSENT
AND
INTER-MUNICIPAL AGREEMENTS TO FUND PUBLIC USE IMPROVEMENTS**

SFC YONKERS Project

Dated as of _____, 200____

**Affected Tax Jurisdictions:
Westchester County
City of Yonkers**

**Section:
Block:
Lot:**

**FULL TAX AGREEMENT
WITH
AFFECTED TAX JURISDICTIONS CONSENT
AND
INTER-MUNICIPAL AGREEMENTS TO FUND PUBLIC USE IMPROVEMENTS**

This Agreement (the "Agreement"), dated as of the ___ day of _____, 2008, by and between **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with its offices located at 470 Nepperhan Avenue, Yonkers, New York 10701 (the "Agency"), **STRUEVER FIDELCO CAPPELLI LLC**, a limited liability company organized and existing under the laws of the State of New York, having its principal office at 115 Stevens Avenue, Valhalla, New York 10595 (the "Company"), **CITY OF YONKERS**, a municipal corporation having its principal office at 40 South Broadway, Yonkers, New York 10701 (the "City") and the **COUNTY OF WESTCHESTER**, a municipal corporation having its principal place of business at 148 Martine Avenue, White Plains, New York 10601 (the "County")

W I T N E S S E T H :

WHEREAS, the Agency was created by Chapter 83 of the Laws of 1982 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has requested the Agency's assistance with a certain project (the "Projects") consisting of: (i) the mixed-use commercial, recreational and residential project described in the SEQRA Findings Statement as "River Park Center" on the River Park Center Site; and (ii) the mixed-use commercial project described in the SEQRA Findings Statement as "Cacace Center" on the Cacace Center Site (as said terms are defined in that certain Land Disposition Agreement dated on or about the date hereof between the Agency, City and Yonkers Community Development Agency ("CDA") and the Company (the "River Park Center and Cacace Center Land Disposition Agreement"); and (iii) the proposed redevelopment by the Company of other property owned by the CDA located along the Hudson River and commonly known as "Parcels H," "Parcel I," and a portion of "Parcel J" which redevelopment is subject to the Land Disposition Agreement dated on or about the date of the River Park Center and Cacace Center LDA (hereinafter the "Parcel H & I Land Disposition Agreement" and together with the River Park Center and Cacace Center Land Disposition Agreement, the "LDAs"); and

WHEREAS, in order to induce the Company to undertake the Projects, and to provide critical improvements for use by the general public, the Agency is willing to take a fee interest or leasehold interest in the Disposition Parcels (as defined in the LDAs), cause the improvements to be constructed and hold title to the improvements and equipment that are involved with the Projects (collectively, the "LDA Facilities"), and lease portions of the LDA Facilities back to the Company pursuant to the terms and conditions of the Financing Leases contemplated by the LDAs (the "Company Facilities") with certain of the LDA Facilities retained by the Agency for

public use (the "Public Use Facilities") which may be partially or wholly funded with increment revenue bonds ("FTA Bonds") to be issued by the Agency (to the extent funded by said bonds, the improvements constitute "FTA Funded Public Use Improvements" as defined herein); and

WHEREAS, the Agency has determined that facilitating the development of the LDA Facilities will accomplish, in part, its public purposes; and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than Special Charges as defined in Section 2.1 herein, which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to acquire, construct and equip the LDA Facilities in accordance with the application dated _____ and committed in the application to use a project labor agreement for all aspects of the Projects; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for in lieu of payments calculated based on full tax equivalents set at the fixed amounts described herein, for the benefit of the City and the County (collectively, the "Affected Tax Jurisdictions"); and

WHEREAS, in order to finance certain public use improvements and infrastructure described in the schedule attached hereto (the "FTA Funded Public Use Improvements"), the parties hereto desire to designate an area of the City described on the attached "Schedule of Properties in Increment District" for purposes of calculating increments in Real Property Taxes resulting from the Projects (the "Increment District") and by City Council Resolution No. _____ dated _____, 200__ and County Resolution No. ____ dated _____, 200__ the Affected Tax Jurisdictions approved of this Agreement and the schedules attached hereto and thereby agreed to accept amounts under this Agreement and payable under similar agreements or otherwise payable within the Increment District, an amount equal to the Property Tax Baseline Amount (defined herein) PLUS 25% of the aggregate Increment Payments made in the Increment District ("Affected Tax Jurisdictions Payments") with the balance of 75% of the aggregate Increment Payments payable hereunder or under similar agreements ("Agency Retained Payments"), representing the amount that may be retained by the Agency to pay for the costs and debt service (including any required reserves) related to the FTA Bonds funding the Increment Funded Public Use Improvements ("Approved Uses of Agency Retained Payments"); provided, however, that at any time during the term hereof, any excess of Agency Retained Payments over Approved Uses of Agency Retained Payments shall be distributed by the Agency to the Affected Tax Jurisdictions in proportion to the respective taxing rates of the City and the County and shall constitute a supplement to the Affected Tax Jurisdictions Payments; and

WHEREAS, to the extent the Agency Retained Payments are insufficient at any time to pay debt service, the Company has agreed to make additional payments hereunder or to purchase subordinate bonds to be issued by the Agency to cover any shortfalls in the capital required to fund the Approved FTA Funded Public Use Improvements or shortfalls in debt service on FTA Bonds issued by the Agency; and

WHEREAS, the City and the County have acknowledged that the FTA Funded Public Use Improvements are necessary improvements for general public use and each have confirmed that each FTA Funded Public Use Improvement is of the type and character that could be provided by the City and County respectively.

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

Section I – Definitions and Payment obligations of the Company, County and City:

Section 1.1 All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the LDAs.

“Affected Tax Jurisdictions Payments” means the Property Tax Baseline Amounts plus 25% of the Increment Payments plus distributions of the any excess of Agency Retained Payments over Approved Uses of Agency Retained Payments to the Affected Tax Jurisdictions in proportion to the respective taxing rates of the City and the County.

“Agency Retained Payments” means the payments made hereunder and under similar agreements concerning in lieu of tax payments for parcels in the Increment District to the extent necessary to pay for the costs and debt service (including any required reserves) related to the FTA Bonds.

“Approved FTA Funded Public Use Improvements” means the improvements described on the attached schedule as approved by the City and County.

“Approved Uses of Agency Retained Payments” means costs and debt service (including any required reserves) related to the FTA Bonds funding the Increment Funded Public Use Improvements and the Subordinate FTA Bonds.

“FTA Bonds” shall mean those revenue bonds issued by the Agency payable from Agency Retained Payments.

“FTA Funded Public Use Improvements” shall mean those improvements described on the attached Schedule of Approved FTA Funded Public Use Improvements, as amended from time to time with written consent of all parties hereto.

“Full Tax Payments” shall mean the amounts described in Schedule 1.1 attached hereto.

“Increment District” shall mean the tax parcels described on the attached schedule of properties.

“Increment Payments” shall mean all amounts payable on all properties in the Increment District, including Real Estate Taxes or in lieu of Real Estate Taxes, but excluding all Special Charges as described in Section 2.1 herein, in excess of the Property Tax Baseline Amounts,

whether through real property tax payments or under agreements with the taxing jurisdictions or public benefit corporations.

"Increment Receipts" has the meaning described in Section 1.2 herein.

"Property Tax Baseline Amount" shall mean \$_____ which amount represents all the real property tax payments or in lieu of payments, excluding all Special Charges described in Section 2.1 herein, payable on properties in the Increment District for City fiscal year 2008-2009 and County fiscal year 2009 based on the October 15, 2007 tax status and tax valuation date.

"Public Use Facilities" means the portion of the LDA Facilities retained by the Agency for public use.

"Real Estate Taxes" means all general levy real estate taxes levied by the City or the County including Real Estate Taxes levied by the City for its dependent schools, excepting however, in all events amounts payable as Special Charges as described in Section 2.1 herein.

"Subordinate FTA Bonds" has the meaning described in Section 5.3 herein.

"Tax Increment Fund" has the meaning described in Section 1.2 herein.

"Tax Increment Trustee" has the meaning described in Section 1.2 herein.

Section I – Payments and Allocations.

1.1 Payments. To provide certainty to the Affected Tax Jurisdictions and the Company, and certainty as to payments to be available to holders of the FTA Bonds, the parties have agreed that payments in lieu of Real Estate Taxes for the Company Facilities shall be established at fixed dollar amounts with known inflators for a 30 year period following the respective date of issuance of a temporary certificate of occupancy for the relevant phase, as described on Schedule 1.1 attached hereto ("Full Tax Payments"). The Public Use Facilities, specifically including the FTA Funded Public Use Improvements, shall be exempt from payment of all Real Estate Taxes [and Special Charges described in Section 2.1 herein]. The Company agrees to pay annually to the Agency (or at the election of the Agency to the Tax Increment Trustee described in Section 1.2 below) the Full Tax Payments described in Schedule 1.1, on the earlier of the dates described in Schedule 1.1 or the date of issuance of a temporary certificate of occupancy for the respective phase described in Schedule 1.1 (each a "Payment Date"). The parties agree and acknowledge that payments made hereunder are to fund public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise not be entitled to since the subject parcels are not on their respective tax rolls.

1.2 Tax Increment Fund. The Agency may designate a trustee for payments to be made hereunder upon notice to all parties hereto (the "Tax Increment Trustee"). The Tax Increment Trustee shall establish and maintain a fund (the "Tax Increment Fund"), into which the Tax Increment Trustee shall deposit all payments made to it pursuant to this Full Tax Agreement

and any other amounts required or permitted to be deposited therein pursuant to the provisions hereof. All moneys due and to become due to the Tax Increment Trustee under or pursuant to the Full Tax Agreement shall be paid directly to the Tax Increment Trustee by wire transfer, or at such other address as the Agency may designate to the Company in writing from time to time. Immediately upon their receipt by the Tax Increment Trustee, the proceeds of any Full Tax Payments and Increment Payments (the "Increment Receipts") required by this Full Tax Agreement shall be deposited to the Tax Increment Fund. Increment Receipts deposited to the Tax Increment Fund while FTA Bonds are outstanding shall be transferred for the following purposes in order of priority in which listed: Tax Increment Trustee fees and expenses, payments of debt service and reserves on the FTA Bonds, payments of debt service and reserves on the Subordinate Bonds.

1.3 Allocation. The Affected Tax Jurisdictions hereby acknowledge, covenant and agree for the benefit of the holders of the FTA Bonds of the Agency issued in connection herewith, that the Affected Tax Jurisdictions will not impair or contest in any way the rights vested in the Agency under the Act to undertake the Projects, to establish and collect the Full Tax Payments and Increment Payments or to fulfill the terms of this Full Tax Agreement and the other documents and agreements entered into in connection herewith on behalf of the holders of such bonds, nor will the Affected Tax Jurisdictions in any way impair the rights and remedies of the Tax Increment Trustee, the holders of such bonds or the FTA Bond Trustee until such bonds, together with interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the holders thereof are fully met and discharged. The parties agree and consent to the Agency retaining amounts payable hereunder, and under any other similar agreement with third parties where Increment Payments are being made for property in the Increment District, to pay for debt service and reserves and costs of issuing FTA Bonds issued by the Agency to fund the FTA Funded Public Use Improvements and Subordinate FTA Bonds issued by the Agency; provided the Agency Retained Amount shall not exceed an amount equal to 75% of the Increment Payments in the Increment District; provided further that, each year, any excess of Agency Retained Payments over Approved Uses of Agency Retained Payments shall be distributed by the Agency to the Affected Tax Jurisdictions in proportion to the respective taxing rates of the City and the County. The Agency shall remit to the Affected Tax Jurisdictions said excess, if any, within thirty (30) days of receipt of evidence from the trustee of the FTA Bonds that an excess exists and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as Real Estate Taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have otherwise consented in writing to a specific allocation.

1.4 Tax Rates. For purposes of determining the allocation of the Full Tax Payment among the Affected Tax Jurisdictions, the Agency shall use the tax rates relating to the respective fiscal years of the County and City for which the payment relates.

1.5 Valuation of Future Additions to the Company Facilities and Phasing: If there shall be a future addition to the Company Facilities, after the date of this Agreement, constructed or otherwise added in any manner within the Increment District not contemplated at the time of this Agreement the Company shall notify the parties hereto of such future addition ("Future Addition"). The notice shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the other parties hereto may thereafter

request. Upon the issuance of a temporary certificate of occupancy for any such Future Addition to the Company Facilities, the Company shall become liable for payment of Full Tax Payments due hereunder or under similar agreement. The Agency shall notify the Company within ninety (90) days of receipt of written evidence from the Company of the issuance of a temporary certificate of occupancy for Future Additions of any proposed increase in the amounts due hereunder related to such Future Addition. If the Company shall disagree with the determination of amounts due for any Future Additions, such payment obligation shall be fixed by binding arbitration at an amount equal to Real Estate Taxes that would be payable with respect to the Future Addition had the Agency not been in title escalating each year thereafter at the same rate of increase contemplated by Schedule 1.1. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased payment established by the Agency until a different Full Tax Payment shall be established. If a lesser Full Tax Payment is determined in any proceeding or by subsequent agreement of the parties, the Full Tax Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the future succeeding payment(s) after payment of debt service and reserves on all outstanding bonds. Attached hereto is the estimated phasing of construction schedule for the Company Facilities and estimated Full Tax Payment for each phase. The amounts described for each phase shall be assumed to be accurate and payable commencing with the first day of the first calendar month following issuance of a temporary certificate of occupancy for the improvements involved in the respective phase.

1.6 Period of Benefits. This Agreement shall include: (i) the 20____ County tax year through the 20____ County tax year and (ii) the 20____-____ City tax year through the 20____ - ____ City tax year. This PILOT Agreement shall expire on December 31, 20____; *provided, however*, the Company shall pay the 20____ County tax bill and the 20____ - ____ City tax bill on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b and 485-e of the New York Real Property Tax Law ("RPTL"). It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto. In no event shall the Company be entitled to receive tax benefits relative to the Company Facilities for more than the periods provided for herein.

1.7 Security for Payments. A mortgage (the "Full Tax Mortgage") or other assurance of payments in a form reasonably acceptable to the Agency shall be provided by the Company for each phase of the Improvements as described in Schedule 1.1 [Each phase will describe Improvements, date when payments are to commence and mortgage amount].

Section II - Special District Charges, Special Assessments and other charges.

2.1 Special district charges, special assessments, special ad valorem levies specifically including but not limited to charges imposed by the City of Yonkers for frontage feet ("CC001"); Housing Units ("CC002"); ETPA Charge ("CC003"); and a Safety Inspection Fee ("CC004") and district charges, including but not limited to pure water charges and Westchester County sewer district and refuse district charges, are not included in the amount of the Full Tax Payment and are to be paid in full in accordance with normal billing practices (collectively, the "Special Charges").

Section III - Transfer of LDA Facilities.

3.1 In the event that title to all or part of the Company Facilities are transferred from the Agency to the Company or the Company is otherwise ineligible for a continued tax exemption hereunder or under some other tax incentive program for any reason, or this Agreement terminates and the subject properties are not timely transferred back to the Company, the Company agrees to pay no later than the next date on which Real Property Taxes are due (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the respective Company Facilities if the same had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination hereof. As tax parcels are terminated from this Agreement, the Agency shall release said parcel from the mortgage described in Section 1.7 herein upon payment of all amounts accruing hereunder through the date of termination with regard to said parcel.

Section IV - Assessment Challenges.

4.1 The parties hereto intend to establish a fixed payment schedule of Full Tax Payments that are in lieu of Real Estate Taxes with respect to the Company Facilities that, absent default by the Company or a change in law, shall provide tax certainty for the Company, and revenue certainty for the Affected Tax Jurisdictions and the holders of the FTA Bonds. Although the parties hereto acknowledge that the Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Company Facilities, based on the agreement to establish a fixed schedule of Full Tax Payments, the Company hereby agrees for the benefit of the parties hereto to not benefit from any grievance it may institute with respect to Real Property Taxes. A grievance will only cause an adjustment in the Special Charges and the Company shall have the right to any refunds related to grievances involving Special Charges described in Section 2.1 herein.

4.2 The Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers of the Affected Tax Jurisdictions to assess the Company Facilities and apply tax rates to the respective assessments as if the Company Facilities were owned by the Company, and (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

Section V – Covenants and Pledge concerning 75% the Increment Payments.

5.1 Agency Funds. The City and County hereby consent (i) to the amounts to be paid in lieu of taxes for property located in the Increment District from the Company as set forth in

Schedule 1.1; (ii) to the amounts payable by other parties from time to time under similar agreements; and (iii) the Agency retaining the Increment Payments such that the Agency has the ability to pledge the Increment Payments payable hereunder and under like agreements with other parties from time to time and under any other agreements with the City or County or with public benefit corporations formed for the benefit of the City or County relating to payments in lieu of taxes in the Increment District; provided that in no event shall the Agency Retained Amounts exceed 75% of the Increment Payments at any given time.

5.2 Services Agreement. The City and County acknowledge the public purpose of the Agency funding the FTA Funded Public Use Improvements and hereby designates the Agency to provide said services for general public use. The parties acknowledge that not all Increment Payments will be made under an agreement with the Agency and as such the Agency is unable to insure to holders of its FTA Bonds access to the Agency Retained Amounts where greater than 25% of the Increment Payments are made outside agreements with the Agency. In such event, subject to Section 5.4 herein, the City and County agree to pay to the Agency from time to time amounts to assist the Agency in funding the Approved Uses of Agency Retained Payments such that the Agency receives on an annual basis under this Agreement and under similar agreements, an amount equal to 75% of the Increment Payments in the Increment District ("Agency Portion of Increment Payments"); provided that in no event shall the obligation to pay hereunder cause the City and County to collectively receive less than 25% of the Increment Payments in the Increment District after accounting for payments made hereunder. By January 15 preceding the next applicable City fiscal year and next applicable County fiscal year (by January 15, 2010 with respect to the 2010-2011 City fiscal year and 2011 County fiscal year) the Company shall deliver an Estimated Accounting. The Estimated Accounting shall be a certification by the chief financial officer of the Company that: (i) Approved Uses of Agency Retained Payments exceed or do not exceed Agency Retained Payments for the respective City and/or County fiscal year; and (ii) if Approved Uses of Agency Retained Payments exceed Agency Retained Payments, the certification shall further certify the amount of the excess (the "Requested Appropriation under Section 5.2"), else no further action is required. The County and city hereby agree to pay, subject to appropriation, to the FTA Fund Trustee, ninety (90) days after the first day of their respective fiscal year, the lesser of the Requested Appropriation under Section 5.2 or the actual amounts by which Tax Increments received exceed 25% of the Tax Increment in the Increment District.

5.3 Company Backstop. To the extent the Agency has insufficient funds to pay Approved Uses of Agency Retained Payments, as calculated from time to time, the Company, shall either pay on demand an amount to the Agency to fund the shortfall by: (i) making supplemental payments hereunder which upon receipt shall be deemed payments of the nature described in Schedule 1.1; and/or (ii) purchase subordinate bonds issued by the Agency payable out of future excesses of the Agency Portion of Increment Payments over Approved Uses of Agency Retained Payments received by the Agency with an interest rate equal to the FTA Bonds ("Subordinate FTA Bonds").

5.4 Acknowledgement of Pledge. The City and the County acknowledge and consent to the Agency pledging for the benefit of the holders of FTA Bonds, the Agency Portion of the Increment Payments; provided the proceeds of the FTA Bonds issued by the Agency are used exclusively to fund the FTA Funded Public Use Improvements and debt service related to the

FTA Bonds issued by the Agency. The City and County agree not to take any actions or fail to take any actions that would interfere with the ability of the Agency to perform under agreements related to the FTA Bonds issued by the Agency. The City and County shall execute and deliver agreements and instruments reasonably requested by the holders of the FTA Bonds issued by the Agency from time to time acknowledging the obligation not to interfere contemplated herein and the payment obligations described in Section 5.2 above.

5.5 Right to Convert to FTA Bonds Issued by City or County. Subject to the rights of the holders of the FTA Bonds issued by the Agency, the City and County may elect from time to time to issue FTA Bonds and/or general obligation bonds to acquire all or part of the FTA Funded Public Use Improvements and thereby provide YIDA with the ability to pay down its FTA Bonds. The FTA Bonds issued by the Agency from time to time will provide for such issuances by the City and/or County and related sale by the Agency of a portion of the FTA Funded Public Use Improvements and provide an agreed prorating of the Increment Payments that may continue to be retained by the Agency for repayment of the FTA Bonds issued by the Agency. The parties acknowledge that market conditions may require limitations on this right and/or may limit such actions to predetermined call dates under the FTA Bonds issued by the Agency and may require extraordinary payments for defeasance which shall be the responsibility of the electing party. The terms of this Section 5.4 are not to be construed as an agreement to sell or transfer by the Agency. The terms of this Section 5.4 are merely intended to provide a mechanism that will enable the parties hereto to address changing market conditions in order to maximize the use of the Increment Payments for the benefit of all parties.

Section VI - Representations and Warranties

6.1. The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Agency is duly established under the provisions of the Act and has the power to enter into the transaction contemplated by this Lease Agreement and to carry out its obligations hereunder. Based upon the representations of the Company as to the utilization of the Facility, the Agency has the authority to take the actions contemplated herein under the Act.

(b) The Agency has been duly authorized to execute and deliver this Lease Agreement.

(c) The Agency will take title to or a leasehold interest in the Facility, lease the Facility to the Company pursuant to this Lease Agreement and designate the Company as its agent for purposes of the Project, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and the County of Westchester and improving their standard of living.

(d) Neither the execution and delivery of this Lease Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Lease Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of the Act or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or will constitute default under any of the foregoing,

or result in the creation or imposition of any lien of any nature upon any of the property of the Agency under the terms of any such instrument or agreement.

6.2. The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a [limited liability company / corporation] duly [organized / formed] under the laws of the State of _____ [and is duly authorized to conduct business in the State of New York], has the authority to enter into this Lease Agreement and has duly authorized the execution and delivery of this Lease Agreement.

(b) Neither the execution and delivery of this Lease Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Lease Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The providing of the Facility by the Agency and the leasing thereof by the Agency to the Company will not result in the removal of an industrial or manufacturing plant, facility or other commercial activity of the Company from one area of the State to another area of the State nor result in the abandonment of one or more commercial or manufacturing plants or facilities of the Company located within the State; and the Agency has found that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.

(d) The Facility and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (d). The Company shall operate the Facility in accordance with this Lease Agreement and as a qualified "Project" under the Act.

(e) The Company has caused to be transferred to the Agency a fee interest or leasehold interest in all those properties and assets contemplated by this Lease Agreement and all documents related hereto.

(f) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Lease Agreement.

6.3. The City makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The City is a municipal corporation formed under the laws of the State of New York and has due authority to enter into this Full Tax Agreement and all necessary actions have been taken to duly authorize the execution and delivery of this Full Tax Agreement.

(b) Neither the execution and delivery of this Full Tax Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Full Tax Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is a party, or by which it is bound, or will constitute a default under any of the foregoing, or violate the City Charter or State constitution or result in the creation or imposition of any lien of any nature upon any of the property of the City under the terms of any such instrument or agreement.

6.4. The County makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The County is a municipal corporation formed under the laws of the State of New York and has due authority to enter into this Full Tax Agreement and all necessary actions have been taken to duly authorize the execution and delivery of this Full Tax Agreement.

(b) Neither the execution and delivery of this Full Tax Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Full Tax Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the County is a party, or by which it is bound, or will constitute a default under any of the foregoing, or violate the County Charter or State constitution or result in the creation or imposition of any lien of any nature upon any of the property of the County under the terms of any such instrument or agreement.

Section VII - Events of Default.

7.1 Events of Default. The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section I within thirty (30) days of the Payment Date (the "Delinquency Date"); (ii) make any other payments under the Subordinate FTA Bonds or amounts described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any events of default under the Lease Agreement after the expiration of any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency may, immediately and without further notice to the Company pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default, including but not limited to foreclosure of the Full Tax Mortgage. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the

General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdictions to recover any such amount. The City and County hereby agree that actions to collect the Agency Portion of the Increment Payments shall be subject to rights and remedies of the holders of the FTA Bonds issued by the Agency and the obligations under Section 5.2 herein.

7.2 Late Penalty and Interest. If payments pursuant to Section I herein are not made by the Delinquency Dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section I herein, if said payment is not received by the Delinquency Date defined in Section 6.1 herein, Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

7.3 Inter-creditor Rights. Prior to exercising any remedy hereunder and notwithstanding anything contained in Sections 6.1 and 6.2 above, any Recognized Mortgagee (as defined in the LDAs) shall be afforded notice and the cure rights as follows:

7.3.1 The Company hereby agrees that it shall, as security for its obligations hereunder, grant to the Affected Tax Jurisdictions a mortgage lien on the Facility pursuant to a certain Full Tax Agreement Mortgage, dated on or about the date hereof, from the Company and the Agency to and for the benefit of the Affected Tax Jurisdictions (the "Full Tax Agreement Mortgage"), which Full Tax Agreement Mortgage shall constitute a mortgage lien on and security interest in the Facility. [The Full Tax Agreement Mortgage, when recorded, shall be subordinate in lien to that certain Mortgage and Security Agreement, dated as of , 2008 (the "Mortgage"), by and from the Agency and the Company to and for the benefit of , as Trustee (the "Mortgagee") as the same may be amended, modified, supplemented, combined, consolidated, increased and/or amended and restated and any affordable housing restrictive covenants imposed by Westchester County, if any; provided the right to receive payments under this Full Tax Agreement shall not be subordinated.

7.3.2 For the purposes of this Agreement, the term "mortgages" shall include any mortgage or mortgages, deeds of trust or other liens related to the financing of the construction and improvement of the Facility dated the date hereof and all amendments and restatements thereof given by the Company and the Agency in favor of the lender or any successor lender and other lending institutions which become parties to the mortgage, respectively; provided, however, said subordination of the lien of this Mortgage is expressly conditioned upon the payment obligations hereunder having a priority right of payment over amounts payable under the above described mortgages. Without limiting the foregoing, the term "mortgage" shall include the Mortgage. ANY SUCH

MORTGAGE SHALL BE A LIMITED, NON-RECOURSE OBLIGATION OF THE AGENCY AND SHALL IN NO EVENT REQUIRE THE PAYMENT BY THE AGENCY TO ANY PARTY OF ANY AMOUNT INCLUDING, BUT NOT LIMITED TO, PRINCIPAL, INTEREST OR ANY OTHER AMOUNT SECURED BY ANY SUCH MORTGAGE.

7.3.3 If the Mortgagor, with respect to all or a portion of the Facility and/or such Mortgagor's successors and assigns, shall mortgage or grant a security interest in such Mortgagor's interest in the Facility and, if the Mortgagee shall send to the Agency (pursuant to the notice provisions of Section 9.2 herein) a true copy of its mortgage, together with written notice specifying the name and address of the Mortgagee, so long as such mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the holder to the Agency, the following provisions shall, subject to and unless otherwise prohibited by all applicable law including, but not limited to, the Act, apply (in respect of such mortgage and of any other mortgages which also comply with the above):

(a) Except in the case of an Event of Default, there shall be no renewal, cancellation, surrender, acceptance of surrender, amendment or modification of this Agreement or the Full Tax Agreement Mortgage by joint action of the Agency and the Company alone, without, in each case, the prior consent in writing of the Mortgagee, nor shall any merger result from the acquisition by, or devolution upon, any one entity of any fee and/or leasehold estates in the Facility.

(b) The Agency shall, at no cost to the Agency and at the sole cost of the Company, upon receipt of any notice or other communication, whether of default or any other matter, simultaneously serve a copy of such notice upon the Mortgagee, and no such notice or other communication to the Company shall be deemed received unless a copy is so served upon the Mortgagee in the manner provided in this Agreement for the giving of notice.

(c) Notwithstanding anything to the contrary herein, in the case of an Event of Default, if the Agency serves a notice of default upon the Company, it shall, at no cost to the Agency and at the sole cost of the Company, also serve a copy of such notice upon (i) the Mortgagee listed in Section 9.2 below, and (ii) upon any other Mortgagee, (provided the Agency has been given prior written notice of such Mortgagee, together with its address for service).

(d) In the case of an Event of Default by the Company under this Agreement, the Mortgagee shall have forty-five (45) days for a monetary default and ninety (90) days in the case of any other default, after notice to the Mortgagee of such default (which notice shall be given in the manner set forth in Section 9.2 below), to cure or to cause to be cured the default complained of and the Agency shall accept such performance by or at the instigation of such Mortgagee as if same had been done by the Company. Each notice of default given by the Agency will state the amounts of any payments herein provided that are then claimed to be in default.

(e) If, before the expiration of Mortgagee's cure period as provided in paragraph (d) above, Mortgagee shall have notified the Agency in writing of its agreement to pay or cause to be paid to the Agency, within forty-five (45) days after the expiration of Mortgagor's cure period, all payments in this Agreement provided for and then in default, and/or in the case of non-monetary defaults, shall have agreed within ninety (90) days to commence or caused to be commenced the cure of such non-monetary defaults, if any are then in default (other than defaults which by their nature cannot be cured), and shall prosecute or cause the prosecution of same to completion with reasonable diligence (collectively, the "extended cure period"), then the Agency shall not exercise any of its rights and remedies hereunder or under the Full Tax Agreement Mortgage until expiration of the extended cure period.

(f) The Company (and not the Agency) shall give the Mortgagee notice of any arbitration or other proceeding or dispute by or between the parties hereto, and shall have the right to intervene therein and be made a party to any such arbitration or other proceeding.

(g) The Company shall cause the name of the Mortgagee to be added to the loss payable endorsement of any and all fire and other casualty insurance policies to be carried by the Company on behalf of the Agency in respect of the Facility, and all such policies shall state that the insurance proceeds are to be paid as provided in the Mortgage (this subsection (g) shall in no way be construed to require the Agency to obtain, bear the cost of or maintain any insurance with respect to the Facility and shall have no affect on the insurance requirements contained in the Lease Agreement).

(h) Any award or payment in condemnation or eminent domain in respect of the Facility shall be paid by the Company to the Mortgagee to be applied in the manner specified in the applicable Mortgage.

(i) No fire or casualty loss claims shall be settled and no agreement will be made in respect of any award or payment in condemnation or eminent domain except in accordance with the terms of the Mortgage.

(j) Except where the Mortgagee has succeeded to the interest of the Company in the Facility or assumed the right to cure as provided in this Section VIII, no liability for any payments to be made pursuant to this Agreement or the performance of any of the Company's covenants and agreements under this Agreement shall attach to or be imposed upon the Mortgagee, and if the Mortgagee or its nominee or designee succeeds to the interest of the Company in the Project, all of the obligations and liabilities of the Mortgagee or its nominee or designee shall be limited to such entity's interest in the Facility and as otherwise imposed by this Agreement and shall cease and terminate upon assignment of this Agreement (any such further assignment to be approved by the Agency).

(k) Notwithstanding any provision of this Agreement, the Lease Agreement, or the Full Tax Agreement Mortgage to the contrary, foreclosure of a mortgage or any sale of the Company's interest in this Agreement and/or the Facility in connection with a foreclosure, whether by judicial proceedings, or any conveyance of the Company's interest in this Agreement and/or the Facility to the Mortgagee or its nominee or designee by virtue of or in lieu of foreclosure or other appropriate proceedings, or any conveyance of the Company's interest in this Agreement and/or the Facility by the Mortgagee or its nominee or designee, shall (i) not require the consent or approval of the Agency and shall not be a default or Event of Default hereunder and shall not affect the validity or enforceability of this Agreement and (ii) not affect the validity or enforceability of this Agreement.

(l) The Agency acknowledges that this Section 8.2 shall be deemed to apply to the Mortgage without further action by the Mortgagee.

Section VIII - Assignment.

8.1 No portion of any interest in this Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which consent shall not be unreasonably withheld, delayed or conditioned.

Section IX - Miscellaneous.

9.1 Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

9.2 Notices. Any notice, demand, request or other communication which under the terms of this Agreement must or may be given or made or served by any of the parties hereto shall be in writing and shall be given in person, by nationally recognized overnight express delivery service, by United States certified mail, with postage prepaid, or by facsimile transmission with a hard copy sent on the same day by a nationally recognized overnight express delivery service, properly addressed and directed to the party to receive the same at the following address as may hereafter be substituted by notice in writing. Notices shall be effective on the date of delivery and acquisition of a receipt by the sender.

To the CDA:

Yonkers Community Development Agency
87 Nepperhan Avenue
Yonkers, New York 10701
Attn: Chairperson

With a copy to:

Corporation Counsel of the City of Yonkers

40 South Broadway
Yonkers, New York 10701
Attn: Frank J. Rubino, Esq.

To the City:

City of Yonkers
40 South Broadway
Yonkers, New York 10701
Attn: Mayor

With a copy to:

Corporation Counsel of the City of Yonkers
40 South Broadway
Yonkers, New York 10701
Attn: Frank J. Rubino, Esq.

City Council President
City of Yonkers
40 South Broadway
Yonkers, New York 10701

City Council Real Estate Committee
City of Yonkers
40 South Broadway
Yonkers, New York 10701
Attn: Chairperson

To the Agency:

City of Yonkers Industrial Development Agency
40 South Broadway
Yonkers, New York 10701
Attn: Ellen Lynch, President/CEO

With a copy to:

Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn: Shawn M. Griffin, Esq.

Ferrick Lynch MacCartney PLLC
33 Clinton Avenue
South Nyack, New York 10960
Attn: Dennis E.A. Lynch

To the County:

County of Westchester
148 Martine Avenue
White Plains, New York 10601
Attn: County Executive

With a copy to:

County of Westchester
148 Martine Avenue
White Plains, New York 10601
Attn: County Attorney

To the Company:

Struever Fidelco Cappelli LLC
115 Stevens Avenue
Valhalla, New York 10595
Attn: Louis R. Cappelli

With a copy to:

Mr. Carl William Struever
President and CEO
Struever Bros. Eccles & Rouse, Inc.
1040 Hull Street – Suite # 200
Baltimore, Maryland 21230

Mr. Lawrence J. White
Senior Development Director
Struever Bros. Eccles & Rouse, Inc.
1040 Hull Street – Suite # 200
Baltimore, Maryland 21230

Mr. John P. Machen
DLA Piper Rudnick Gray Cary US LLP
6225 Smith Avenue
Baltimore, Maryland 21209

Joseph Apicella
Executive Vice President
Cappelli Enterprises, Inc.
115 Stevens Avenue
Valhalla, New York 10595

Marc E. Berson
Fidelco Yonkers LLC
225 Millburn Avenue – Suite # 202
Millburn, New Jersey 07041

Marla S. Smith
Fidelco Yonkers, LLC
225 Millburn Avenue – Suite # 202
Millburn, New Jersey 07041

DelBello Donnellan Weingarten Wise & Wiederkehr, LLP
One North Lexington Avenue
White Plains, New York 10601
Attn: Alfred B. DelBello, Esq.
Attn: Peter J. Wise, Esq.

To the Institutional Lenders (As notified from time to time by the Company)

Any party may by notice to the others change the address to which notices to such party shall thereafter be given.

9.3 This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Westchester County, New York. To the extent all or portions of the Company Facilities are declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

9.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the LDA Facilities and paid to the Agency by the Company. Neither members of the Agency nor any person executing this Agreement on its behalf shall be liable personally under this Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement.

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[Signature Page to PILOT Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF YONKERS

By: _____
Philip A. Amicone, Mayor

COUNTY OF WESTCHESTER

By: _____
Andrew J. Spano, County Executive

**CITY OF YONKERS INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Ellen Lynch, President/CEO

STRUEVER FIDELCO CAPPELLI INC.

By: _____

Acknowledged and Agreed as
of the ____ day of _____ 200__

_____, as Trustee

By: _____
Name:
Title:

Attached Schedules

Property Tax Baseline for Increment District specifying assessment and equalization for all parcels listed on Schedule of Properties in Increment District with total to be used as Property Tax Baseline Amount to be received by the Affected Taxing Jurisdictions

Schedule of Properties in Increment District – with block and lot number information

Approved FTA Funded Public Use Improvements with attached City and County resolutions

Schedule 1.1 – Full Tax Payments (Increment Payments to be made by Company under this Agreement)